

4833  
04509

**DECISION**



*See  
Page 11*

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-190407

DATE: December 21, 1977

MATTER OF: Western Branch Diesel, Inc.

**DIGEST:**

1. Where protester's initial submission indicates protest is without legal merit, GAO will render decision on matter without requesting report from procuring agency.
2. Where solicitation requires 60-day bid acceptance period and bidder limits acceptance period to 30 days rejection of the bid was proper as bid acceptance period is material requirement and failure to comply renders bid nonresponsive.

Western Branch Diesel, Inc. (Western) has protested the rejection of its bid submitted in response to United States Coast Guard solicitation No. H85-0240-6031-0 as nonresponsive and the awarding of the contract to anyone other than Western.

Generally, upon receipt of a protest we request a report from the procuring agency pursuant to our bid protest procedures, 4 C.F.R. Part 20 (1977). However, where it is clear from a protester's initial submission that the protest is legally without merit, we will decide the matter on that basis. Alaska Industrial Coating, B-190295, October 12, 1977, 77-2 CPD 290; What-Mac Contractors, Inc. - Reconsideration, B-187782, January 14, 1977, 77-1 CPD 34. We believe this to be such a case.

The Coast Guard issued the subject solicitation on April 1, 1977, for the purchase of certain engines. By Amendment No. 0003 to the solicitation issued June 13, 1977, bid opening was extended from June 15, 1977, until July 1, 1977, and the award date was extended to September 1, 1977. Paragraph C-24 of the solicitation required that offers remain open for 60 days. Specifically Paragraph C-24 provides:

"Bids offering less than 60 days for acceptance by the Government from the date set for opening will be considered non-responsive and will be rejected."

Correspondence submitted by the protester shows that bids were opened on July 1, 1977, and that Western's bid was declared nonresponsive since it offered only a 30-day acceptance period. Western maintains that Amendment No. 0003 amending Paragraph H-3 and thereby extending both the bid opening and award dates supersedes the 60-day acceptance period required by the solicitation and that its bid was responsive to the solicitation. The Coast Guard, took the position that Paragraph H-3 amended only the time of bid opening and anticipated date of award and did not supersede the 60-day acceptance period contained in Paragraph C-24.

We believe it is clear that Amendment No. 0003 amending Paragraph H-3 of the solicitation did not amend the 60-day acceptance provision contained in the original solicitation. The 60-day acceptance provision was contained in Paragraph C-24 and not in Paragraph H-3 which was amended by Amendment No. 0003. Furthermore Paragraph H-3 as amended still provided for a 60-day period between bid opening and award date, i.e., July 1, 1977, to September 1, 1977, thereby making it clear that the provisions of Paragraph C-24 requiring a 60-day acceptance period were not superseded by Amendment No. 0003.

We have consistently held that a provision in an invitation which requires that a bid remain available for acceptance by the Government for a prescribed period in order to be considered for award is a material requirement and that failure to meet such a requirement renders a bid nonresponsive. 48 Comp. Gen. 19 (1968) and 46 id. 418 (1966). To hold otherwise affords the bidder which has limited its bid acceptance period an advantage over its competitors. When a bidder limits its bid acceptance period it has the option to refuse the award after that time in the event of unanticipated increases in cost, or by extending its acceptance period to accept an award desired. Bidders complying with the required acceptance period would not have that option but would be bound by the Government's acceptance. Perry C. Herford, B-187666, December 6, 1976, 76-2 CPD 463, reconsideration denied, January 25, 1977, 77-1 CPD 52; Miles Metal Corporation, 54 Comp. Gen. 750 (1975), 75-1 CPD 145.

Accordingly, we find Western's bid to have been properly rejected by the Coast Guard as nonresponsive.

  
Deputy Comptroller General  
of the United States